



## WORLDWIDE TERMS AND CONDITIONS OF SALE

### 1. Applicability:

Except for the application of overriding General Terms Agreements previously executed between Buyer and Seller, any purchase order covering the sale of Seller's equipment or services ("Order") shall be governed solely by these Conditions of Sale and other written provisions mutually agreed upon. Any oral understandings are expressly excluded. Seller shall not be deemed to have waived these Conditions of Sale if it fails to object to provisions appearing on, incorporated by reference in, or attached to Buyer's Purchase Order Form which provisions are hereby expressly rejected. Buyers' silence or acceptance or use of products constitutes its acceptance of these Conditions of Sale. No modification or addition to these Conditions of Sale shall be effective unless agreed to in writing and signed by an authorized representative of Buyer and Seller. Seller reserves the right to reject any Order submitted for its acceptance.

### 2. Definitions:

"Order" means any purchase order covering the sale of Seller's equipment or services.

"Equipment" means all equipment and parts manufactured by Seller.

"Buyer" means the company who accepted Seller's offer or is named in the Purchase Order.

"Services" means work, direction of work, technical information or technical consulting and advice or other services furnished by Seller to Buyer and may support such activities as the installation, testing, alignment, startup, operation, repair and maintenance of the Equipment.

"Seller" means the company named on the offer.

"Suppliers" means any of Seller's suppliers of material or services for the Equipment or Services, regardless of tier.

### 3. Delivery:

Delivery of the Equipment hereunder shall be made Ex-works (Incoterms 2000) Seller's plant. Shipping dates are approximate and are based on prompt receipt of all necessary information at Seller's plant. In case of delay in furnishing complete information, dates of shipment may be extended for a reasonable time based on conditions at Seller's plant. In the event Seller provides transport services these will be quoted as a lump sum price based on destination and shipping mode.

Seller shall not be liable for delay in delivery due to causes beyond its reasonable control including but not limited to, acts of God, acts of government, acts of Buyer, fires, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, riot, civil or military authority, freight embargoes, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes. In the event of any such delay, the date of delivery shall be extended for a length of time equal to the period of the delay.

In the event Buyer requests a delay in completion and shipment of the Equipment or any part thereof for any reason, the parties shall agree upon any cost and/or scheduling impact of such delay, with such costs to the account of Buyer. Any delay period beyond thirty (30) days after original scheduled shipment date shall require Buyer to take title and risk of loss of such Equipment, thereafter to make arrangements for storage of such Equipment with the Seller or other party. Seller's invoice, which is contractually based on shipment, shall be issued upon Seller's readiness to ship the original Equipment.

### 4. Warranty:

"Nonconformance" means failure to comply with, or failure to operate due to noncompliance with, applicable Seller drawings or having defects in workmanship or material. Normal wear and tear, erosion, corrosion and the need for regular overhaul and periodic maintenance do not constitute a Nonconformance.

Seller warrants at time of shipment to Buyer its Equipment will comply with applicable Seller drawings and will be free from defects in workmanship and material. Any equipment and parts supplied by Seller but manufactured by third parties carry the warranty that the manufacturer of such equipment and parts conveyed to Seller which can be passed on to Buyer. These warranties run to the Buyer, its successors, assigns, and customers. Supplier's obligations under this warranty shall expire one (1) year from initial startup or use of the Equipment or eighteen (18) months after shipment, whichever occurs first. Seller warrants that the Services shall be performed in accordance with industry practices. Seller's warranty obligation for service work shall expire ninety (90) days from the date of the initial start-up or six (6) months after completion of the service work, whichever occurs first.

Buyer must notify Seller in writing during the defects liability period of a Nonconformance and, within 30 calendar days of discovery of the Nonconformance.

Seller's obligation and Buyer's sole remedy under this defects liability period is repair or replacement, at Seller's election, of any Equipment Nonconformance. All Equipment repaired or replaced will be warranted only for the unexpired portion of the original defects liability period.

Seller agrees to repair or replace Ex-works Seller's plant any Equipment or part thereof manufactured by Seller which does not conform to the warranty for Equipment. Equipment claimed to be defective must be returned, freight prepaid and allowed by Buyer and in accordance with Seller's instructions to the point of manufacture, unless Seller directs otherwise. Title to and risk of loss of any equipment being repaired shall remain with Buyer at all times.

In connection with the performance of any corrective work, all removal and reinstallation of the Equipment shall be performed by Buyer at its expense. Buyer shall, at its expense, be responsible for removing, reinstalling, replacing or supplying any equipment, materials or structures which are necessary to provide reasonable access to the Equipment to be repaired or replaced. Any decontamination or radiation protection necessary in connection with the removal/reinstallation or on-site repair of the Equipment shall be performed by Buyer without cost to Seller.

Seller will not be liable under this warranty if the Equipment has been exposed or subjected to any (1) maintenance, repair, installation, handling, packaging, transportation, storage, operation or use which is improper or otherwise not in compliance with Seller's instructions; (2) alteration, modification or repair by anyone other than Seller or those specifically authorized by Seller, (3) accident, contamination, foreign object damage, abuse, neglect or negligence after shipment to Buyer; (4) damage caused by failure of a Seller supplied Product not under warranty or by any hardware or software not supplied by Seller; (5) use of counterfeit or replacement parts that are neither manufactured nor approved by Seller for use in the Equipment; or (6) Equipment which is normally consumed in operation or which have normal life inherently shorter than the warranty period including, but not limited to, consumables (e.g. flashtubes, lamps, batteries, storage capacitors).

THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR PARTICULAR PURPOSE.

### 5. Payment:

All prices are net cash 30 days from date of invoice, unless otherwise stated in Seller's proposal, quotation, or offer. Should Buyer for any reason default in the payment of the contract of purchase, Buyer agrees to pay all collection costs, attorney fees and expenses incurred in collecting payment, including interest on the amount due at the maximum legal rate. All transportation, insurance and similar charges incident to delivery shall be paid by Buyer. Seller shall issue its invoice upon shipment, or upon notice to Buyer that Seller is ready to ship, whichever is earlier. Depending on the value of the order, Seller may at its sole discretion require progress payments.



**6. Changes:**

Buyer may request modifications as to the amount, scope and/or nature of the Equipment to be supplied by a written change request. Buyer may also request modifications, including but not limited to drawings, models, instructions, specifications, quantities, method of shipment, packing, place of delivery or delivery dates for the Equipment. If, in the opinion of Seller, any modification will affect the agreed fixed price and/or time of delivery, Seller will notify Buyer thereof in writing and will not be obligated to perform any modification unless agreed to by Seller. Buyer shall confirm that such change is authorized and accepted by issuing a Purchase Order revision.

**7. Setoff:**

All amounts that Buyer owes Seller under an Order shall be due and payable according to the terms of an Order. Buyer is prohibited from, and shall not set off such amounts or any portion thereof, whether or not liquidated, against sums which Buyer asserts are due it, its parent affiliates, subsidiaries or other divisions or units under other transactions with Seller, its parent affiliates, subsidiaries or other divisions or units.

**8. Cancellation:**

Buyer reserves the right to cancel any portion of an Order affected by a default of Seller or any insolvency or suspension of Seller's operations or any petition filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.

**9. Non-Disclosure and Non-Use of Sellers' Information:**

Buyer agrees that it will not use Seller's data for the manufacture or procurement of products which are the subject of an Order or any similar products, or cause said products to be manufactured by, or procured from, any other source or reproduce said data and information or otherwise appropriate them without the written authorization of the Seller. Buyer agrees that it will not disclose or make available to any third-party any of Seller's data or other information pertaining to this Order which is proprietary to Seller without obtaining Seller's prior written consent.

**10. Patent Indemnity:**

Except insofar as an Order calls for equipment pursuant to Buyer's designs, drawings or specifications, Seller agrees to pay the amount of any final judgment against Buyer resulting from a suit claiming that any commercial equipment manufactured or furnished hereunder, by reason of their manufacture, sale or use, infringes any United States patent which has issued at date of an Order, and Buyer's reasonable costs and expenses in defense of such suit if Seller does not undertake the defense thereof, provided Seller is promptly notified of the threat or commencement of such suit and is offered full and exclusive control to conduct the defense or settlement thereof.

Seller's indemnity shall not apply where infringement would not have occurred from the normal use for which the equipment was designed. Seller's liability for damages hereunder is limited to those computed solely on the value of any equipment sold to Buyer. In no event shall Seller be liable for consequential damages or costs applicable thereto. In the event of any claim that equipment furnished hereunder infringes any United States patent, Seller may at its option and expense (a) procure for Buyer the right to continue using the product, or (b) replace or modify the product so that it becomes non-infringing, or (c) grant Buyer a credit for such product, less a reasonable depreciation for use, damage, and obsolescence upon its return to Seller. Buyer agrees to pay all costs and expenses incurred by Seller in its defense and the amount of any judgment against Seller, in any suit or proceeding against Seller based upon a claim of infringement, resulting solely from the Buyer combining any equipment furnished hereunder with any item not manufactured or furnished by Seller or from the sale or use of any such combination by Buyer. Seller shall also indemnify Buyer's customers and agents for such infringement if, and to the extent that, Buyer has agreed so to indemnify them, but to no greater extent than Seller has indemnified Buyer herein and under the same conditions as set forth herein. In the event any equipment to be furnished under this Order is to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer and is not the design of Seller, Buyer agrees to defend, indemnify and hold Seller harmless to the same extent and subject to the same requirements as set forth in Seller's obligation to Buyer as above. The above is in lieu of any other indemnity or warranty, express or implied by Seller, with respect to intellectual property (patents, trade secret, mask works, trademarks, copyrights, or the like).

**11. Special Tooling and Data:**

Unless otherwise agreed in writing, all material, software, data processes, equipment, facilities and special tooling, which term includes but is not limited to jigs, dies, fixtures, molds, patterns, special taps, special gages, special test equipment, other special equipment and manufacturing aids and replacements thereof, used in the manufacture of products covered by an Order shall be and remains the property of Seller. Seller retains all rights, title and interest in drawings, engineering instructions, specifications, and all other written data, if any, furnished with equipment.

**12. Import Permit or License:**

In the event an import permit or license is required by Buyer's or End User's authorities for the Equipment sold hereunder, performance is subject to Seller's prior receipt of evidence satisfactory to Seller that an appropriate import permit or license has been granted. As to any such permit or license Buyer shall advise Seller of the validity, number, date of issue and whether the expiration date refers to clearance from the port of departure or arrival at the port of destination. Buyer assumes all responsibility for the procurement thereof and any expenses incurred therein related to any import permit or license. In the event currency exchange controls exist in Buyer's country, Buyer shall so state.

**13. Export License:**

Unless otherwise agreed in writing, Buyer shall be responsible for compliance with the export control laws and regulations of the U.S. Government or the jurisdiction where Seller's manufacturing facility accepting the Order is located, and when required by such laws and regulations shall obtain export and re-export licenses required for goods, services and technical data delivered under an Order. Seller shall not be liable to Buyer for any failure to provide goods, services or technical data as a result of any of the following governmental actions: (1) refusal to grant export or re-export license; (2) cancellation of export or re-export license, or (3) any subsequent interpretation of the export laws and regulations, after the date of an Order, that limits or has a material adverse effect on the cost of Seller's performance on an Order. Seller's performance hereunder is subject to Seller's prior receipt of evidence satisfactory to Seller that an appropriate export license has been granted. If Seller assists in obtaining any export license, Buyer shall reimburse Seller for all expenses.

**14. Taxes:**

Seller's price does not include, and Seller is not responsible for, payment of any tax levied for sales, use, excise, value-added, goods and services, business (franchise or privilege) or any duties, charges or other such taxes. Seller is only responsible for any tax imposed on Seller, by taxing authorities in Seller's jurisdiction, which are based on Seller's revenue, income, net income, net assets, net worth, or capital or any taxes imposed in lieu thereof. Seller accepts sole responsibility and liability for the payment of any and all contributions or taxes for unemployment insurance, social security payments, or other assessments for those persons performing work for Seller hereunder. If Seller is required to pay any taxes or other charges that are the responsibility of the Buyer, then Buyer shall promptly reimburse Seller those amounts.



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Neither party shall assign an Order or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld. The non-assigning party shall not have any obligation to an assignee of the assigning party unless such consent is obtained.

### **16. Waiver:**

Failure by Seller to assert all or any of its rights upon any breach of an Order shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment of service. No waiver of any right shall extend to or affect any other right Seller may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

### **17. Severability:**

If any portion of these Conditions of Sale is determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purposes of the dispute in question and all other provisions shall remain in full force and effect.

### **18. Disputes:**

Except as otherwise specifically agreed in writing by Buyer and Seller, any dispute relating to an Order placed by a Buyer incorporated in the United States which is not resolved by the parties shall be adjudicated by a court of competent jurisdiction in the state of Texas. For Orders placed by a Buyer incorporated outside the United States, the parties shall resort to binding arbitration under mutually agreed procedures.

### **19. Applicable Law:**

This Agreement shall be interpreted in accordance with the laws of the jurisdiction in which the Seller's facility accepting the Order hereunder is located, exclusive of any choice of law provisions. The Seller and Buyer expressly agree to exclude from this Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

### **20. Limitation of Liability:**

The remedies set forth herein are exclusive, and the total liability of the Seller with respect to this Contract, or any breach thereof, whether based on contract, warranty, tort (including negligence), indemnity, strict liability or otherwise, shall not exceed the Contract Price of the specific equipment or service which gives rise to the claim except in the clause entitled "Patent Indemnity." **IN NO EVENT, WHETHER ARISING BEFORE OR AFTER COMPLETION OF ITS OBLIGATIONS UNDER THE CONTRACT, SHALL SELLER BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, REVENUE OR PROFITS, INVENTORY OR USE CHARGES, COST OF CAPITAL, OR CLAIMS OF CUSTOMERS) INCURRED BY BUYER OR ANY THIRD PARTY.**

### **21. Translations; Governing Language:**

English shall be the legal language of this Agreement, and all parties waive any right to use and/or rely upon any other language, translation or interpretation. The parties specifically agree that in the case of any inconsistencies or interpretation disputes, the English language version shall control.

### **22. Entire Agreement:**

The contract of purchase, consisting of these terms and conditions, Seller's quotation and Buyer's order if accepted in writing by Seller, constitutes the entire agreement between Buyer and Seller. All other previous and collateral agreements (including letters of intent or purchase orders issued by Buyer), representations, warranties, promises and conditions relating to the subject matter hereof are superseded by the contract of purchase. Any understanding, promise, representation, warranty or condition not incorporated in the contract of purchase shall not be binding on either party.